

2013 IL App (2d) 130242-U
No. 2-13-0242
Order filed December 30, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
PETER T. SOTTILE, JR.,)	of Kane County.
)	
Petitioner-Appellee,)	
)	
and)	No. 10-D-504
)	
DEBBYE SOTTILE,)	Honorable
)	Robert J. Morrow,
Respondent-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's classification of the marital residence as marital property was not against the manifest weight of the evidence. The trial court did not abuse its discretion by failing to award respondent the marital residence. Affirmed.

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¶ 3 Respondent, Debbye Sottile, appeals from an order of the circuit court of Kane County dissolving her marriage to petitioner, Peter T. Sottile, Jr. Respondent contends that the trial court's classification of the marital home as marital property was contrary to the manifest weight of the evidence. In particular, respondent argues that the trial court failed to properly credit her nonmarital contributions to the purchase, maintenance, and improvement

of the residence, and failed to consider that the property became her nonmarital property by quitclaim deed. Respondent alternatively contends that the trial court abused its discretion in apportioning the marital property by failing to award her the marital residence based upon her contributions to the marriage. We affirm.

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I. BACKGROUND

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Because the parties are familiar with the facts and because we will incorporate the relevant facts into our analysis of the issues, we lay them out only briefly here. The parties were married on December 24, 1985. They have no children. Petitioner filed for dissolution of marriage on April 7, 2010.

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Petitioner was adjudicated disabled and receives \$2,028 per month in social security disability benefits. He does not have any other source of income and is not employed. Respondent was adjudicated disabled and she receives \$470 per month in social security disability benefits.

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From 1986 through 2006, petitioner earned a total of \$814,561 through his employment with various companies. Petitioner testified that from 2003 until 2010, he earned less than \$10,000 per year selling items on eBay.

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Petitioner also received \$97,631 from workers' compensation, lawsuits, and other claims. In

addition, petitioner received an equal share of the jointly-filed Terronde lawsuit, for which the parties received \$487,952.

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Respondent also received \$9,499 from lawsuits and other claims. Respondent alleged that she had been in a car accident in 1999 for which she received a settlement of approximately \$75,000. However, she was unable to produce any evidence indicating the date of the claim, the exact amount received, the date the funds were received, or any bank records to support her claim. Respondent received gifts of \$57,994 from her mother and \$5,000 from her grandfather.

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In 1999, the parties acquired real estate at 39W885 N. Robert Frost Circle, St. Charles, Illinois (St. Charles residence). The real estate was jointly titled at the time of purchase. The real estate was purchased with the proceeds of the sale of the parties' prior residences in Hoffman Estates and Streamwood, both of which had been jointly titled. Those proceeds were deposited in the parties' jointly titled bank accounts. The parties accessed those accounts to purchase the marital residence. The parties were jointly obligated under a home equity line of credit that had an outstanding principal balance of \$249,999.

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In 2004, petitioner executed a quit claim deed conveying the St. Charles residence to her because petitioner was expecting to receive a substantial sum of money from litigation against Lufthansa Airlines. The lawsuit against Lufthansa was involuntarily dismissed and

petitioner did not receive any money from the suit. However, petitioner subsequently received \$47,835 from a malpractice lawsuit against his attorney relating to the Lufthansa litigation and respondent deposited it into a bank account solely titled in her name.

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Petitioner testified that he executed the quitclaim deed to shield the St. Charles residence from his creditors in anticipation that Lufthansa would counter sue him for attorney fees and costs.

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The trial court found that the St. Charles residence was marital property because it was purchased with the sale of the parties' prior residences, the funds of which came from a jointly titled bank account, which the court also deemed to be marital. The court further found that petitioner did not relinquish possession of the marital residence voluntarily, rejecting respondent's claim that the St. Charles residence was separate nonmarital property. The court found that petitioner owed respondent \$60,000 for dissipation to be paid from his retirement benefits and that respondent was to use the proceeds to pay the remaining balance due on the home equity loan. The court ordered the St. Charles residence be sold and any remaining net proceeds of the sale of the marital residence were to be divided between the parties equally after payment of attorney fees. Respondent was ordered to quitclaim her interest in the St. Charles residence to herself and petitioner as tenants in common. Respondent was awarded a 50% share in petitioner's accrued pension funds. This timely appeal follows.

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II. ANALYSIS

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Respondent contends that the trial court improperly classified the St. Charles residence as marital property. In support of her contention, she argues that (1) the trial court failed to properly credit her nonmarital contributions to the purchase, maintenance, and improvement of the residence, and (2) the residence became her nonmarital property when petitioner quitclaimed it to her. Respondent alternatively contends that, even if the St. Charles residence is considered marital property, the trial court abused its discretion by failing to award the residence to her based upon her contributions during the marriage.

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Classification of Property

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According to section 503 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503 (West 2008)), prior to distributing property upon dissolution of marriage, the trial court must classify the property as marital or nonmarital. *In re Marriage of Didier*, 318 Ill. App. 3d 253, 258 (2000); *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 154 (2005). The trial court's classification as marital or nonmarital will not be disturbed on appeal unless it is contrary to the manifest weight of the evidence. *In re Marriage of Steel*, 2011 IL App (2d) 080974, ¶ 57; *In re Marriage of Gurda*, 304 Ill. App. 3d 1019, 1023-24 (1999).

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Under the Act, there is a rebuttable presumption that all property acquired by either spouse after the date of marriage but before the entry of judgment of dissolution is marital property,

regardless of how title is held. 750 ILCS 5/503(b) (West 2008). The presumption can only be overcome with a showing, by clear and convincing evidence, that the property falls within one of the statutory exceptions listed in subsection 503(a) of the Act. 750 ILCS 5/503(a) (West 2008). Any doubts as to the nature of the property are resolved in favor of finding that the property is marital. 750 ILCS 5/503(a) (West 2008); *In re Marriage of Hegge*, 285 Ill. App. 3d 138, 141 (1996).

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The problem with respondent's first contention is that her nonmarital funds were used to help purchase the property in Hoffman Estates, which was titled jointly in both respondent's and petitioner's names. That house was sold and the funds from the proceeds were used to purchase a house in Streamwood, which also was titled jointly. The Streamwood house was sold and those funds were used to buy the jointly-titled St. Charles residence at issue in this case. See *In re Marriage of Rogers*, 85 Ill. 2d 217, 223 (1981) (placing title to nonmarital property in joint tenancy with spouse raises presumption of gift to marital estate, and property thus becomes marital property). Moreover, the record reveals that the money used to purchase the St. Charles residence also came in part from joint accounts as well as from petitioner's earnings.

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Respondent has not offered any explanation as to what exact funds were used for the purchase of the Hoffman Estate residence, and no explicit testimony as to what exact funds were used to buy the Streamwood residence. In short, respondent has failed to trace, by clear

and convincing evidence, her contribution of nonmarital funds to the St. Charles residence. Accordingly, the trial court did not err in classifying the property as marital. Any nonmarital assets used to purchase the St. Charles residence were transmuted into marital property years ago.

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Respondent next argues that her nonmarital assets, including money from a settlement, were used to maintain and improve the St. Charles residence. She notes that petitioner's contributions ceased when he went on disability in 2003. The record shows that the St. Charles residence was purchased in 1999. Petitioner contributed to the maintenance of the residence at least from 1999 to 2003. Thus, even if we were to assume that the money received from the settlement was not gifted to the marriage or transmuted to marital property, the trial court's decision that the St. Charles residence was marital property was not against the manifest weight of the evidence based on petitioner's contributions to the purchase and maintenance of the property. Accordingly, we reject respondent's arguments.

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Gift by Quitclaim

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Respondent next contends that the St. Charles residence became her nonmarital property when petitioner quitclaimed it to her. The party seeking to establish that property acquired after the marriage is not marital property has the burden of proving that the property in question was intended to be a gift. *Marriage of Hoffman*, 94 Ill. 2d 205, 216 (1983). The presumption of marital property is overcome upon a showing by clear, convincing, and unmistakable evidence

that the property was a gift. *In re Marriage of Deem*, 123 Ill. App. 3d 1019, 1021 (1984). Mere proof that title to property was placed in one party's name does not rebut the presumption created by section 503 of the Act; there must be donative intent to pass title and relinquish all present and future dominion over the property. *In re Marriage of Davis*, 215 Ill. App. 3d 763, 771 (1991). A spouse claiming property as a gift must "show not only delivery," but also that the delivery was made "with the intention of vesting the title absolutely and irrevocably in the donee." *Simmons v. Simmons*, 87 Ill.App.3d 651, 654 (1980).

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In this case, respondent has failed to establish, by clear and convincing evidence, that petitioner intended to pass title and relinquish all present and future dominion over the St. Charles residence. A quitclaim deed was signed by both parties and recorded on May 21, 2004, and title to the St. Charles residence was placed in respondent's name. Other than the deed itself, respondent testified that she had no other evidence to support her claim that petitioner intended the transaction to be a gift. Instead, respondent testified about a deal involving petitioner's litigation against his former employer, Lufthansa, which was pending at the time the deed was executed in 2004. According to respondent, petitioner was expecting to receive a substantial sum of money from the lawsuit. Respondent stated that petitioner wished to acknowledge respondent's financial contributions to the marriage. She claimed that there was an unwritten agreement that she would keep the St. Charles residence, and that petitioner would keep the money he was expecting to receive from the Lufthansa litigation.

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However, respondent's conduct belied her assertion. It was uncontradicted that petitioner's lawsuit was involuntarily dismissed later that year, and that petitioner received nothing from Lufthansa as a result of his claims. The parties stipulated that petitioner received \$47,835 from a subsequent malpractice lawsuit against his attorney relating to the Lufthansa litigation, but it was respondent who deposited that money into a bank account, which was titled solely in her name.

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Moreover, other evidence established that petitioner did not intend to gift the St. Charles residence to respondent. Petitioner testified that he executed the quitclaim deed for the sole purpose of shielding the marital residence from his creditors. In particular, petitioner stated that his attorney warned him that Lufthansa could counter-sue him for attorney fees and costs and that those fees could amount to tens of thousands of dollars. By executing the quitclaim deed, petitioner sought to prevent Lufthansa from collecting against the marital property.

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The parties' conduct following the execution of the quitclaim deed also was evidence of petitioner's lack of intent to gift the St. Charles property to respondent. Petitioner continued to live in the residence until respondent obtained an emergency order of protection requiring him to leave in March 2010. Furthermore, the property was encumbered by a home equity loan incurred in both parties' names, jointly. At the time of trial, there still was a balance due on the loan.

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We find *In re Marriage of Davis*, 215 Ill. App. 3d 763 (1991), and *In re Marriage of Leff*, 148 Ill. App. 3d 792 (1986), on point. In *Davis*, the court held that a husband's transfer of title to the marital home was to eliminate a taxable asset in his estate, and that the home remained marital property. *Davis*, 215 Ill. App. 3d at 772-73. The court noted that the husband continued to reside in the home, continued to make payments toward the home and its improvements, and filed no gift tax return. Here, petitioner resided in the marital residence until 2010, and he testified that he continued to contribute to the household expenses after he had moved out.

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In *Leff*, the wife claimed that the marital residence was her nonmarital property. The residence was the third property the parties had purchased together since their marriage. 148 Ill. App. 3d at 806-07. During the marriage the husband executed a quitclaim deed titling the house in the wife's name. *Id.* at 807. The wife claimed her husband wanted her to have the house. The husband testified that he transferred the house to protect the property from a possible malpractice claim. He testified that he did not intend it to be a gift. *Id.* We affirmed the trial court's finding that there was no donative intent. We further found the wife's testimony was not "clear and convincing" and, therefore, was insufficient to rebut the presumption that the marital residence was marital property. *Id.* at 807-08.

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Respondent has failed to meet her burden of proving by clear and convincing evidence that

the St. Charles residence is her sole, separate nonmarital property. She failed to present any evidence that the property was acquired by gift or in exchange for property acquired before the marriage. She failed to show that the property was excluded by valid agreement of the parties or that the property was acquired before the marriage. In sum, respondent has failed to establish, by clear and convincing evidence, that the St. Charles residence was acquired by any of the methods contemplated by section 503(a) of the Act.

¶ 31 Distribution of Assets

¶ 3 Respondent last contends that she should have been awarded the marital house, even if it is considered marital property, based upon her contributions to the marriage. “ ‘It is well settled that marital debts as well as marital assets must be distributed equitably.’ [Citation.]” *In re Marriage of Underwood*, 314 Ill. App. 3d 325, 328 (2000) (quoting *In re Marriage of Davis*, 292 Ill. App. 3d 802, 807 (1997)). An equitable distribution, however, “does not require mathematical equality.” *In re Marriage of Thornley*, 361 Ill. App.3d 1067, 1071 (2005). “We will not disturb a trial court’s division of marital assets unless it has clearly abused its discretion.” *Id.* “An abuse occurs when no reasonable person would take the view adopted by the trial court.” *In re Marriage of Nelson*, 297 Ill. App. 3d 651, 658 (1998).

¶ 3 Examining the evidence presented to the trial court indicates that the distribution of the marital estate was not an abuse of discretion where the St. Charles residence essentially was divided equally after a set off for petitioner’s dissipation of assets.

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III. CONCLUSION

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For the reasons stated, the judgment of the circuit court of Kane County is affirmed.

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Affirmed.

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